

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAVID RUSSELL,

Petitioner,

vs

9:03-CV-1301

SUPERINTENDENT BURGE,

Respondent.

APPEARANCES:

OF COUNSEL:

DAVID RUSSELL

Petitioner, Pro Se

91-A-4511

Southport Correctional Facility

P.O. Box 2000

Pine City, NY 14871

HON. ELIOT L. SPITZER

Attorney General of the

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The Capitol

Albany, NY 12224-0341

RISA L. VIGLUCCI, ESQ.

Asst. Attorney General

DAVID N. HURD

United States District Judge

DECISION and ORDER

Petitioner, David Russell, brought this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. By a report recommendation dated April 15, 2005, the Honorable David R. Homer, United States Magistrate Judge, recommended that the petition for a writ of habeas corpus be denied. Petitioner has filed timely objections.

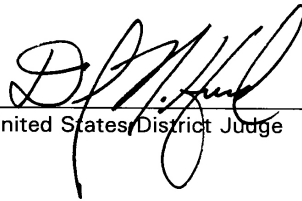
Based upon a de novo determination of the report and recommendation, including the portions to which petitioner objected, the Report-Recommendation is accepted and adopted in whole. See 28 U.S.C. 636(b)(1); Rule 10, Rules Governing Section 2254 Cases.

Accordingly, it is

ORDERED that the petition is DENIED and DISMISSED in its entirety.

IT IS SO ORDERED.

Dated: August 25, 2005
Utica, New York.


United States District Judge